

Kenneth M. Piken

Lisa Waxman Davis

Michael R. Freeda

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Of Counsel

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**KENNETH M. PIKEN
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*(Not for service of process)

October 4, 2010

VIA ECF

The Honorable Denis R. Hurley
United State District Court
Eastern District of New York
1044 Federal Plaza
Central Islip, New York 11722-4449

RE: Tormented Souls, Inc. v. Tormented Souls Motorcycle Club, Inc.,
And Joseph Falcone, No. CV-09-1743

Dear Judge Hurley:

This office represents the Plaintiff in the above referenced matter. We are in receipt of the opposition to our letter motion dated September 17, 2010, and this letter constitutes our reply to Defendants opposition.

It should initially be noted that in opposition to the instant application, the Defendants submit nothing more than the unsworn to affidavit of Joseph Falcone. Consequently, Defendants have failed to offer any legally sufficient opposition to Plaintiff's Motion.

Notwithstanding, Defendants do not deny that they failed to provide "the name and address of each member" of the Tormented Souls Motorcycle Club. In fact, Mr. Falcone readily admits in his affidavit that he failed to provide the names and addresses of both Glen Talbot and Mark Pressler, heads of the Florida and Illinois Chapters respectively. Plaintiff served upon the Defendants no less than 4 written notices advising Defendants of their defaults. See default notices attached hereto as **Exhibit "A"**. Plaintiff knowingly and willfully refused to produce the required documents, forcing the Plaintiff to bring this instant application and cause the Plaintiff additional legal fees and expenses.

In further violation of the Court Order of April 27, 2010, Defendant Falcone failed to provide Plaintiff's Counsel with a signed notarized affidavit stating that no garments of any kind have been sold bearing the name, style and logo of Plaintiff.

KENNETH M. PIKEN
&
ASSOCIATES, P.C.

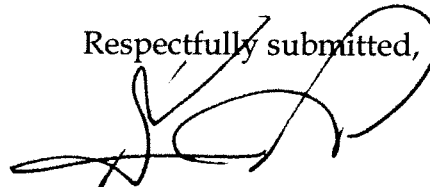
In Mr. Falcone's opposition he states that he does not understand what this entails, and that "we never sold anything to anyone..." Plaintiff's counsel sent Mr. Falcone several letters advising Defendants of their default and seeking compliance with the Court Order dated April 27, 2010. Despite Plaintiff's numerous correspondence, this is the first time Mr. Falcone has alleged that he does not understand what he is required to do with regard to this branch of Your Honor's April 27th Order. Moreover, despite Mr. Falcone's representation that "we never sold anything to anyone...", Mr Falcone inconsistently states only a few paragraphs earlier that "former members ... were allowed to keep whatever they *paid for*..."

Pursuant to Your Honor's April 27, 2010 Order, Defendants were further required to remove all patches, decals, and insignias of any kind bearing the name, style and logo of Plaintiff, and forward same to Plaintiff's Counsel. Despite Defendants previous representation that its Motorcycle Club had 73 members, Defendant now claims said club only has 21. Notwithstanding, to date, Plaintiff has received only 15 patches from Defendants.

It should further be noted that despite receiving an informal letter from Spiegel & Utrera, P.A. "withdrawing as counsel" for the defendants, this office has not received any official document or order from the Court recognizing same. New York Law requires a corporation to be represented by legal counsel in court proceedings. Therefore, if the corporate defendant herein is not actually represented by counsel, rendering the corporate defendant in default.

In light of the foregoing and pursuant to Paragraphs 10 & 14 of the April 27, 2010 Order, it is respectfully requested that the Court impose sanctions of \$500.00 for each and every violation of said Order.

Respectfully submitted,



Kenneth M. Piken
(KMP 8221)

KMP/mm
Enclosures

cc: Magistrate Judge Michael L. Orenstein (via ECF)
Joseph Falcone (via Certified Mail, RRR and First Class Mail)
Russell D. Williams, Esq., Spiegel & Utrera, P.A.(via First Class Mail)
Tormented Souls, Inc. (Via First Class Mail)

EXHIBIT "A"

FILE COPY

August 11, 2010

VIA CERTIFIED MAIL AND FIRST CLASS MAIL

Joseph Falcone
4095 Maywood Drive
Seaford, NY 11783

RE: Tormented Souls Inc. v. Tormented Souls Motorcycle Club, Inc.
Index No.: CV-09-1743

Dear Mr. Falcone,

As per our conversation on Friday, August 6, 2010, you stated that all members of your club were going to be in New York. At that time, you stated that these members would be signing the necessary affidavits as per the Stipulation and Order for Permanent Injunction and they would be sent out immediately after they were signed.

As of today, you have not provided this office with any of said affidavits, thus violating the Stipulation and Order.

This office no longer extends any courtesy to you in regards to this matter.

If the aforementioned violation is not cured and sufficient proof is provided to this office that said violation has been cured, the Court may impose a sanction by letter notice of \$500.00 for each and every violation.

Furthermore, we will seek all additional remedies including but not limited to costs, disbursements and attorney's fees. Should said sanction not be paid, a Motion for Contempt of a Court order will be filed.

Please note this letter of default will be annexed to the court proceedings.

Very truly yours,

Kenneth M. Piken

KMP/cg
Cc: Tormented Souls, Inc.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joseph Falcone
4095 Maywood Dr
Saratoga, NY 11783

2. Article Number

(Transfer from service label)

7010 0290 0001 8276 9860

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-1009

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
x B Falcone
- B. Received by (Printed Name) *B Falcone* C. Date of Delivery *7/29/10*
- D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joseph Falcone
4095 Maywood Dr
Saratoga, NY 11783

2. Article Number

(Transfer from service label)

7010 0290 0001 8276 9846

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
X B Falcone
- B. Received by (Printed Name) *B Falcone* C. Date of Delivery *7/29/10*
- D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Kenneth M. Piken

Lisa Waxman Davis

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KENNETH M. PIKEN

&

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FILE COPY

July 27, 2010

VIA CERTIFIED MAIL AND FIRST CLASS MAIL

Joseph Falcone
4095 Maywood Drive
Seaford, NY 11783

RE: Tormented Souls Inc. v. Tormented Souls Motorcycle Club, Inc.
Index No.: CV-09-1743

Dear Mr. Falcone,

As you are aware, this Office represents the Plaintiffs in the above referenced matter. Pursuant to the Stipulation and Order for Permanent Injunction of April 27, 2010, you were to provide this office with the following:

1. Affidavits of Mr. Falcone and all affiliated chapters which states they consent to the jurisdiction of the United States District Court, Eastern District of New York.
2. Physical evidence in the form of an affidavit that the affiliated chapters and members in Nevada, Nomad, New York, Indiana, Florida, Michigan and Illinois have received actual notice of the Stipulation and Order for Permanent Injunction, which restrains them from using the name, mark, or designation "Tormented Souls", or any name or mark confusingly similar to the name, style and logo of Plaintiff.
3. Documentation which states there has been a directive issued to all members and affiliates that there is a Federal Court Order precluding any one from wearing a jacket or garment with the name, style and logo of "Tormented Souls."

As of today, you have not provided this office with any of said information and affidavits, thus violating the Stipulation and Order.

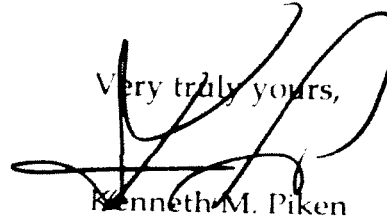
Pursuant to paragraph eleven(11) of the Court Order, you have a period of ten (10) days to cure the violation.

If the aforementioned violation is not cured and sufficient proof is provided to this office that said violation has been cured, the Court may impose a sanction by letter notice of \$500.00 for each and every violation.

Furthermore, we will seek all additional remedies including but not limited to costs, disbursements and attorney's fees. Should said sanction not be paid, a Motion for Contempt of a Court order will be filed.

Please note this letter of default will be annexed to the court proceedings.

Very truly yours,

A handwritten signature in black ink, appearing to read 'KMP', is written over the typed name 'Kenneth M. Piken'. The signature is stylized with a large loop at the end.

Kenneth M. Piken

KMP/cg

Cc: Tormented Souls, Inc.

Kenneth M. Piken

Lisa Waxman Davis

Michael R. Freedla

Barry S. Jacobson

Roger Siegel

Of Counsel

Betty A. Hans

Office Manager

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FILE COPY

July 1, 2010

VIA CERTIFIED MAIL

Joseph Falcone
4095 Maywood Drive
Seaford, NY 11783

**RE: Tormented Souls Inc. v. Tormented Souls Motorcycle Club, Inc.
Index No.: CV-09-1743**

Dear Mr. Falcone,

Included in the package received by this firm were nine(9) affidavits, two from yourself, with the other seven being from various persons stating that "all said patches, styles, logos, etc., have been physically removed from all garments and inventory."

With the exception of one(1) of your affidavits, none of the other affidavits consent to the jurisdiction of the United States District Court, Eastern District of New York. As a result, you are now in contempt of a court order.

Furthermore, there has been no physical evidence submitted to this office that the affiliated chapters and members in Nevada, Nomad, New York, Indiana, Florida, Michigan and Illinois have received actual notice of the Stipulation and Order for Permanent Injunction, which restrains them from using the name, mark, or designation "Tormented Souls", or any name or mark confusingly similar to the name, style and logo of Plaintiff.

Additionally, there has been no documentation submitted which states there has been a directive issued to all members and affiliates that there is a Federal Court Order precluding any one from wearing a jacket or garment with the name, style and logo of "Tormented Souls."

Please note this letter of default will be annexed to the court proceedings.

Very truly yours,

Kenneth M. Piken

KMP/eg

Cc: Tormented Souls, Inc

cc: John G. Tutunjian, Esq.

Kenneth M. Piken

Lisa Waxman Davis
Michael R. Freeda
Barry S. Jacobson
Roger Siegel
Of Counsel

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FILE COPY

Albany Office
90 State Street
Suite 815
Albany, NY 11214
(Not for service of process)

VIA CERTIFIED AND FIRST CLASS MAIL

June 4, 2010

Joseph Falcone
4095 Maywood Drive
Seaford, NY 11783

**RE: Tormented Souls Inc. v. Tormented Souls Motorcycle Club, Inc.
Index No.: CV-09-1743**

Dear Mr. Falcone,

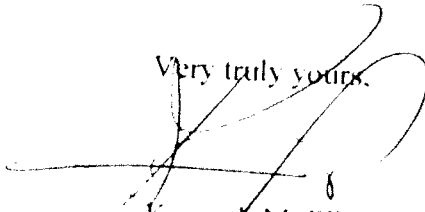
This firm received your package of fifteen(15) patches bearing the name "Tormented Souls." However, there are more than fifteen members listed on the spreadsheet we received with the affidavits.

Pursuant to the court order, any unused or undistributed patches, decals, and insignias of any kind bearing the name, style and logo of plaintiff must also be forwarded to this Office.

We ask that you please send any and all remaining patches, decals, and insignias you have in your possession to this firm immediately. If we do not receive all unused or undistributed patches, decals, and insignias we shall notify the Court and shall commence the appropriate procedures.

Please note this letter of default will be annexed to the court proceedings.

Very truly yours,


Kenneth M. Piken

KMP/eg

Cc: Tormented Souls, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
TORMENTED SOULS INC.,

Plaintiff,

-against-

Index No. CV-09-1743
Hurlev, D.
Orenstein, M.

AFFIDAVIT OF SERVICE

TORMENTED SOULS MOTORCYCLE CLUB INC.,
and JOSEPH FALCONE,

Defendants.
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

BETTY ANN HANS, being duly sworn, deposes and says that I am not a party to this action and am over the age of 18 years and reside in Oyster Bay, New York.


On October 6, 2010, I served the annexed **REPLY FROM PLAINTIFF** in the above referenced matter VIA FIRST CLASS MAIL in a sealed envelope, with postage prepaid thereon, via Certified Mail, Return Receipt Requested, and via First Class Mail, in a post office depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as indicated below:

Joseph Falcone
4095 Maywood Drive
Seaford, New York 11783

Russell D. Williams, Esq. (via First Class Mail only)
Spiegel & Utrera, P.A.
Attorneys for Defendant
1840 Coral Way, 4th Floor
Miami, FL 33145


BETTY ANN HANS

Sworn to before me
on October 6, 2010.



Notary Public

Michael Joseph Mattia
Notary Public State of New York
No. 02MA6224325
Qualified in Suffolk County
Commission Expires July 26, 2014